

SUBTITLE B—MARITIME SECURITY FLEET PROGRAM²¹

ESTABLISHMENT OF FLEET

SEC. 651. ESTABLISHMENT OF FLEET²² (46 App. U.S.C. 1187 (1999)).

(a) **In General.** The Secretary of Transportation shall establish a fleet of active, militarily useful, privately-owned vessels to meet national defense and other security requirements and maintain a United States presence in international commercial shipping. The Fleet shall consist of privately owned, United States-flag vessels for which there are in effect operating agreements under this subtitle, and shall be known as the Maritime Security Fleet.

(b) **Vessel Eligibility.** A vessel is eligible to be included in the Fleet if the vessel is self-propelled and—

(1)(A) is operated by a person as an ocean common carrier;

(B) whether in commercial service, on charter to the Department of Defense, or in other employment, is either—

(i) a roll-on/roll-off vessel with a carrying capacity of at least 80,000 square feet or 500 twenty-foot equivalent units; or

(ii) a lighter aboard ship vessel with a barge capacity of at least 75 barges; or

(C) any other type of vessel that is determined by the Secretary to be suitable for use by the United States for national defense or military purposes in time of war or national emergency;

(2)(A)(i) is a United States-documented vessel; and

(ii) on the date an operating agreement covering the vessel is entered into under this subtitle, is—

(I) a LASH vessel that is 25 years of age or less; or

(II) any other type of vessel that is 15 years of age or less; except that the Secretary of Transportation may waive the application of clause (ii) if the Secretary, in consultation with the Secretary of Defense, determines that the waiver is in the national interest; or

(B) it is not a United States-documented vessel, but the owner of the vessel has demonstrated an intent to have the vessel documented under chapter 121 of title 46, United States Code, if it is included in the Fleet, and the vessel will be less than 10 years of age on the date of that documentation;

²¹ Public Law 104-239, approved October 8, 1996 (104 STAT. 3118), the Maritime Security Act of 1996, added Subtitle B to Title VI of the Merchant Marine Act, 1936, and made comprehensive amendments to the Act and other provisions of law. Section 8 of Public Law 104-239, provides. “**In General.** The Secretary of Transportation may prescribe rules as necessary to carry out this Act and the amendments made by this Act.”

²² Note the provisions of law appearing at the end of Section 651 that affect the establishment of the Maritime Security Fleet.

(3) the Secretary of Transportation determines that the vessel is necessary to maintain a United States presence in international commercial shipping or, after consultation with the Secretary of Defense, determines that the vessel is militarily useful for meeting the sealift needs of the United States with respect to national emergencies; and

(4) at the time an operating agreement for the vessel is entered into under this subtitle, the vessel will be eligible for documentation under chapter 121 of title 46, United States Code.

* * * * *

PROVISIONS OF LAW THAT AFFECT THE MARITIME SECURITY PROGRAM

Section 1136(c) and (d) and Section 1137 of Public Law 104 -324, approved October 19, 1996 (110 STAT. 3987) provide:

Sec. 1136 (c). Trust Charterers.—Set forth on page 456.

Sec. 1136 (d). Indirect Vessel Owners.—Set forth on page 456.

Sec. 1137. Vessel Standards.²³

(a) **Certificate of Inspection.**—A vessel used to provide transportation service as a common carrier which the Secretary of Transportation determines meets the criteria of section 651(b) of the Merchant Marine Act, 1936, but which on the date of enactment of this Act is not a documented vessel (as that term is defined in section 2101 of title 46, United States Code), shall be eligible for a certificate of inspection if the Secretary determines that—

(1) the vessel is classed by and designed in accordance with the rules of the American Bureau of Shipping or another classification society accepted by the Secretary;

(2) the vessel complies with applicable international agreements and associated guidelines, as determined by the country in which the vessel was documented immediately before becoming a documented vessel (as defined in that section); and

(3) that country has not been identified by the Secretary as inadequately enforcing international vessel regulations as to that vessel.

(b) **Continued Eligibility for Certificate.**—Subsection (a) does not apply to a vessel after any date on which the vessel fails to comply with the applicable international agreements and associated guidelines referred to in subsection (a)(2).

²³ Set forth as a note to 46 App. U.S.C. 1187.

(c) **Reliance on Classification Society.**—

(1) ***In General.***—The Secretary may rely on a certification from the American Bureau of Shipping or, subject to paragraph (2), another classification society accepted by the Secretary to establish that a vessel is in compliance with the requirements of subsections (a) and (b).

(2) ***Foreign Classification Society.***—The Secretary may accept certification from a foreign classification society under paragraph (1) only—

(A) to the extent that the government of the foreign country in which the society is headquartered provides access on a reciprocal basis to the American Bureau of Shipping; and

(B) if the foreign classification society has offices and maintains records in the United States.

* * * * *

CONTINUATION OF THE MERCHANT MARINE ACT, 1936

SEC. 652. OPERATING AGREEMENTS (46 App. U.S.C. 1187a (1999)).

(a) ***In General.*** The Secretary of Transportation shall require, as a condition of including any vessel in the Fleet, that the owner or operator of the vessel enter into an operating agreement with the Secretary under this section. Notwithstanding subsection (g), the Secretary may enter into an operating agreement for, among other vessels that are eligible to be included in the Fleet, any vessel which continues to operate under an operating-differential subsidy contract under subtitle A or which is under charter to the Department of Defense.

(b) ***Requirements for Operation.*** An operating agreement under this section shall require that, during the period a vessel is operating under the agreement—

(1) the vessel—

(A) shall be operated exclusively in the foreign trade or in mixed foreign and domestic trade allowed under a registry endorsement issued under section 12105 of title 46, United States Code, and

(B) shall not otherwise be operated in the coastwise trade; and

(2) the vessel shall be documented under chapter 121 of title 46, United States Code.

(c) ***Regulatory Relief.*** A contractor of a vessel included in an operating agreement under this subtitle may operate the vessel in the foreign commerce of the United States without restriction, and shall not be subject to any requirement under section 801, 808, 809, or 810. Participation in the program established by this subtitle shall not subject a contractor to section 805 or to any provision of subtitle A. The restrictions

of section 901(b)(1) of this Act concerning the building, rebuilding, or documentation of a vessel in a foreign country shall not apply to a vessel for any day the operator of that vessel is receiving payment under an operating agreement under the subtitle.²⁴

(d) Effectiveness and Annual Payment Requirements of Operating Agreements.

(1) ***Effectiveness.*** The Secretary of Transportation may enter into an operating agreement under this subtitle for fiscal year 1996. The agreement shall be effective only for 1 fiscal year, but shall be renewable, subject to the availability of appropriations, for each subsequent fiscal year through the end of fiscal year 2005.

(2) ***Annual Payment.*** An operating agreement under this subtitle shall require, subject to the availability of appropriations and the other provisions of this section, that the Secretary of Transportation pay each fiscal year to the contractor, for each vessel that is covered by the operating agreement, an amount equal to \$2,300,000 for fiscal year 1996 and \$2,100,000 for each fiscal year thereafter in which the agreement is in effect. The amount shall be paid in equal monthly installments at the end of each month. The amount shall not be reduced except as provided by this section.

(e) ***Certification Required for Payment.*** As a condition of receiving payment under this section for a fiscal year for a vessel, the contractor for the vessel shall certify, in accordance with regulations issued by the Secretary of Transportation, that the vessel has been and will be operated in accordance with subsection (b)(1) for at least 320 days in the fiscal year. Days during which the vessel is drydocked, surveyed, inspected, or repaired shall be considered days of operation for purposes of this subsection.

(f) ***Operating Agreement is Obligation of United States Government.*** An operating agreement under this subtitle constitutes a contractual obligation of the United States Government to pay the amounts provided for in the agreement to the extent of actual appropriations.

²⁴ Section 3603(b) of Public Law 105-85, approved November 18, 1997, added the final sentence to Section 652(c). Section 901(b)(1) of the Merchant Marine Act, 1936, *infra*, sets forth the Cargo Preference Act of 1954, that generally precludes vessels that were constructed or reconstructed outside the United States, or documented under any foreign registry from transporting the cargoes reserved to U.S. vessels by that section until they have been documented under the laws of the United States for a period of three years. Section 3603(b) of Public Law 105-85 amended section 652(c) to remove this restriction from vessels receiving MSP payments. Upon acceptance of a foreign constructed vessel into the MSP, it becomes immediately eligible to transport cargoes under the Cargo Preference Act of 1954.

(g) **Limitations.** The Secretary of Transportation shall not make any payment under this subtitle for a vessel with respect to any days for which the vessel is—

(1) subject to an operating-differential subsidy contract under subtitle A or under a charter to the United States Government, other than a charter pursuant to section 653;

(2) not operated or maintained in accordance with an operating agreement under this subtitle; or

(3) more than 25 years of age, except that the Secretary may make such payments for a LASH vessel for any day for which the vessel is more than 25 years of age if that vessel—

(A) is modernized after January 1, 1994,

(B) is modernized before it is 25 years of age, and

(C) is not more than 30 years of age.

(h) **Payments.** With respect to payments under this subtitle for a vessel covered by an operating agreement, the Secretary of Transportation—

(1) except as provided in paragraph (2), shall not reduce any payment for the operation of a vessel to carry military or other preference cargoes under section 2631 of title 10, United States Code, the Act of March 26, 1934 (46 U.S.C. App. 1241-1), section 901(a), 901(b), or 901b of this Act, or any other cargo preference law of the United States;

(2) shall not make any payment for any day that a vessel is engaged in transporting more than 7,500 tons of civilian bulk preference cargoes pursuant to section 901(a), 901(b), or 901b that is bulk cargo; and

(3) shall make a pro rata reduction in payment for each day less than 320 in a fiscal year that a vessel covered by an operating agreement is not operated in accordance with subsection (b)(1), with days during which the vessel is drydocked or undergoing survey, inspection, or repair considered to be days on which the vessel is operated.

(i) **Priority for Awarding Agreements.** Subject to the availability of appropriations, the Secretary shall enter into operating agreements according to the following priority:

(1) ***Vessels Owned by Citizens.***

(A) ***Priority.***—First, for any vessel that is—

(i) owned and operated by persons who are citizens of the United States under section 2 of the Shipping Act, 1916;²⁵ or

²⁵ Note the various exceptions to this requirement set forth in the provisions of law following Section 2 of the Shipping Act, 1916, page 323, *infra*.

(ii) less than 10 years of age and owned and operated by a corporation that is—

(I) eligible to document a vessel under chapter 121 of title 46, United States Code; and

(II) affiliated with a corporation operating or managing for the Secretary of Defense other vessels documented under that chapter, or chartering other vessels to the Secretary of Defense.

(B) *Limitation on Number of Operating Agreements.*—The total number of operating agreements that may be entered into by a person under the priority in subparagraph (A)—

(i) for vessels described in subparagraph (A)(i), may not exceed the sum of—

(I) the number of United States-documented vessels the person operated in the foreign commerce of the United States (except mixed coastwise and foreign commerce) on May 17, 1995; and

(II) the number of United States-documented vessels the person chartered to the Secretary of Defense on that date; and

(ii) for vessels described in subparagraph (A)(ii), may not exceed 5 vessels.

(C) *Treatment of Related Parties.*—For purposes of subparagraph (B), a related party with respect to a person shall be treated as the person.

(2) ***Other Vessels Owned by Citizens and Government Contractors.*** To the extent that amounts are available after applying paragraph (1), any vessel that is owned and operated by a person who is—

(A) a citizen of the United States under section 2 of the Shipping Act, 1916²⁶, that has not been awarded an operating agreement under the priority established under paragraph (1); or

(B)(i) eligible to document a vessel under chapter 121 of title 46, United States Code; and

(ii) affiliated with a corporation operating or managing other United States-documented vessels for the Secretary of Defense or chartering other vessels to the Secretary of Defense.

(3) ***Other Vessels.*** To the extent that amounts are available after applying paragraphs (1) and (2), any other eligible vessel.

(j) ***Transfer of Operating Agreements.*** A contractor under an operating agreement may transfer the agreement (including all rights and obligations under the agreement) to any person eligible to enter into that operating agreement under this subtitle after notification of the

²⁶ See footnote 22, page 75 *supra*.

Secretary in accordance with regulations prescribed by the Secretary, unless the transfer is disapproved by the Secretary within 90 days after the date of that notification. A person to whom an operating agreement is transferred may receive payments from the Secretary under the agreement only if each vessel to be covered by the agreement after the transfer is an eligible vessel under section 651(b).

(k) **Reversion of Unused Authority.** The obligation of the Secretary to make payments under an operating agreement under this subtitle shall terminate with respect to a vessel if the contractor fails to engage in operation of the vessel for which such payment is required—

(1) within one year after the effective date of the operating agreement, in the case of a vessel in existence on the effective date of the agreement, or

(2) within 30 months after the effective date of the operating agreement, in the case of a vessel to be constructed after that effective date.

(l) Procedure for Considering Application; Effective Date for Certain Vessels.

(1) **Procedures.** No later than 30 days after the date of the enactment of the Maritime Security Act of 1996, the Secretary shall accept applications for enrollment of vessels in the Fleet, and within 90 days after receipt of an application for enrollment of a vessel in the Fleet, the Secretary shall enter into an operating agreement with the applicant or provide in writing the reason for denial of that application.

(2) **Effective Date.** Unless an earlier date is requested by the applicant, the effective date for an operating agreement with respect to a vessel which is, on the date of entry into an operating agreement, either subject to a contract under subtitle A or on charter to the United States Government, other than a charter under section 653, shall be the expiration or termination date of the contract under subtitle A or of the Government charter covering the vessel, respectively, or any earlier date the vessel is withdrawn from that contract or charter.

(m) **Early Termination.** An operating agreement under this subtitle shall terminate on a date specified by the contractor if the contractor notifies the Secretary, by not later than 60 days before the effective date of the termination, that the contractor intends to terminate the agreement. Vessels covered by an operating agreement terminated under this subsection shall remain documented under chapter 121 of title 46, United States Code, until the date the operating agreement would have terminated according to its terms. A contractor who terminates an operating agreement pursuant to this subsection shall continue to be bound by the provisions of section 653 until the date the operating agreement would have terminated according to its terms. All terms and conditions of an Emergency Preparedness Agreement entered into under section 653 shall remain in effect until the date the operating agreement would

have terminated according to its terms, except that the terms of such Emergency Preparedness Agreement may be modified by the mutual consent of the contractor and the Secretary of Transportation and the Secretary of Defense.

(n) **Nonrenewal for Lack of Funds.** If, by the first day of a fiscal year, sufficient funds have not been appropriated under the authority provided by section 655 for that fiscal year, the Secretary of Transportation shall notify the Congress that operating agreements authorized under this subtitle for which sufficient funds are not available will not be renewed for that fiscal year if sufficient funds are not appropriated by the 60th day of that fiscal year. If funds are not appropriated under the authority provided by section 655 for any fiscal year by the 60th day of that fiscal year, then each vessel covered by an operating agreement under this subtitle for which funds are not available is thereby released from any further obligation under the operating agreement, and the vessel owner or operator may transfer and register such vessel under a foreign registry deemed acceptable by the Secretary of Transportation, notwithstanding any other provision of law. If section 902 is applicable to such vessel after registration of the vessel under such a registry, the vessel is available to be requisitioned by the Secretary of Transportation pursuant to section 902.

(o) **Award of Operating Agreements.—**

(1) ***In General.*** The Secretary of Transportation, subject to paragraph (4), shall award operating agreements within each priority under subsection (i) (1), (2), and (3) under regulations prescribed by the Secretary.

(2) ***Number of Agreements Awarded.*** Regulations under paragraph (1) shall provide that if appropriated amounts are not sufficient for operating agreements for all vessels within a priority under subsection (i) (1), (2), or (3), the Secretary shall award to each person submitting a request a number of operating agreements that bears approximately the same ratio to the total number of vessels in the priority, as the amount of appropriations available for operating agreements for vessels in the priority bears to the amount of appropriations necessary for operating agreements for all vessels in the priority.

(3) ***Treatment of Related Parties.*** For purposes of paragraph (2), a related party with respect to a person shall be treated as the person.

(4) ***Preference for United States-Built Vessels.*** In awarding operating agreements for vessels within a priority under subsection (i) (1), (2), or (3), the Secretary shall give preference to a vessel that was constructed in the United States, to the extent such preference is consistent with establishment of a fleet described in the first sentence of section 651(a) (taking into account the age of the vessel, the nature of service provided by the vessel, and the commercial viability of the vessel).

(p) **Notice to United States Shipbuilders Required.** The Secretary shall include in any operating agreement under this subtitle a requirement that the contractor under the agreement shall, by not later than 30 days after soliciting any bid or offer for the construction of any vessel in a foreign shipyard and before entering into a contract for construction of a vessel in a foreign shipyard, provide notice of the intent of the contractor to enter into such a contract to each shipyard in the United States that is capable of constructing the vessel.

NATIONAL SECURITY REQUIREMENTS

SEC. 653. EMERGENCY PREPAREDNESS AGREEMENT (46 App. U.S.C. 1187b (1999)).

(1) **Requirement to Enter Agreement.** The Secretary of Transportation shall establish an Emergency Preparedness Program under this section that is approved by the Secretary of Defense. Under the program, the Secretary of Transportation shall include in each operating agreement under this subtitle a requirement that the contractor enter into an Emergency Preparedness Agreement under this section with the Secretary. The Secretary shall negotiate and enter into an Emergency Preparedness Agreement with each contractor as promptly as practicable after the contractor has entered into an operating agreement under this subtitle.

(2) **Terms of Agreement.** An Emergency Preparedness Agreement under this section shall require that upon a request by the Secretary of Defense during time of war or national emergency, or whenever determined by the Secretary of Defense to be necessary for national security (including any natural disaster, international peace operation, or contingency operation (as that term is defined in section 101 of title 10, United States Code)), a contractor for a vessel covered by an operating agreement under this subtitle shall make available commercial transportation resources (including services). The basic terms of the Emergency Preparedness Agreements shall be established pursuant to consultations among the Secretary, the Secretary of Defense, and Maritime Security Program contractors. In any Emergency Preparedness Agreement, the Secretary and a contractor may agree to additional or modifying terms appropriate to the contractor's circumstances if those terms have been approved by the Secretary of Defense.

(3) **Participation After Expiration of Operating Agreement.** Except as provided by section 652(m), the Secretary may not require, through an Emergency Preparedness Agreement or operating agreement, that a contractor continue to participate in an Emergency Preparedness Agreement when the operating agreement with the contractor has

expired according to its terms or is otherwise no longer in effect. After expiration of an Emergency Preparedness Agreement, a contractor may volunteer to continue to participate in such an agreement.

(b) **Resources Made Available.** The commercial transportation resources to be made available under an Emergency Preparedness Agreement shall include vessels or capacity in vessels, intermodal systems and equipment, terminal facilities, intermodal and management services, and other related services, or any agreed portion of such non-vessel resources for activation as the Secretary may determine to be necessary, seeking to minimize disruption of the contractor's service to commercial shippers.

(c) **Compensation.—**

(1) ***In General.*** The Secretary of Transportation shall provide in each Emergency Preparedness Agreement for fair and reasonable compensation for all commercial transportation resources provided pursuant to this section.

(2) ***Specific Requirements.*** Compensation under this subsection—

(A) shall not be less than the contractor's commercial market charges for like transportation resources;

(B) shall include all the contractor's costs associated with provision and use of the contractor's commercial resources to meet emergency requirements;

(C) in the case of a charter of an entire vessel, shall be fair and reasonable;

(D) shall be in addition to and shall not in any way reflect amounts payable under section 652; and

(E) shall be provided from the time that a vessel or resource is diverted from commercial service until the time that it reenters commercial service.

(3) ***Approval of Amount by Secretary of Defense.*** No compensation may be provided for a vessel under this subsection unless the amount of the compensation is approved by the Secretary of Defense.

(d) **Temporary Replacement Vessels.** Notwithstanding any other provision of this subtitle or of other law to the contrary—

(1) a contractor or other person that commits to make available a vessel or vessel capacity under the Emergency Preparedness Program or another primary sealift readiness program approved by the Secretary of Defense may, during the activation of that vessel or capacity under that program, operate or employ in foreign commerce a foreign-flag vessel or foreign-flag vessel capacity as a temporary replacement for the activated vessel or capacity; and

(2) such replacement vessel or vessel capacity shall be eligible during the replacement period to transport preference cargoes subject to section 2631 of title 10, United States Code, the Act of March 26, 1934 (46 U.S.C. App. 1241-1), and sections 901(a), 901(b), and 901b of this Act to the same extent as the eligibility of the vessel or vessel capacity replaced.

(e) Redelivery and Liability of United States for Damages.—

(1) ***In General.*** All commercial transportation resources activated under an Emergency Preparedness Agreement shall, upon termination of the period of activation, be redelivered to the contractor in the same good order and condition as when received, less ordinary wear and tear, or the Government shall fully compensate the contractor for any necessary repair or replacement.

(2) ***Limitation on Liability of United States.*** Except as may be expressly agreed to in an Emergency Preparedness Agreement, or as otherwise provided by law, the Government shall not be liable for disruption of a contractor's commercial business or other consequential damages to a contractor arising from activation of commercial transportation resources under an Emergency Preparedness Agreement.

(3) ***Limitation on Application of Other Requirements.*** Sections 902 and 909 of this Act shall not apply to a vessel while it is covered by an Emergency Preparedness Agreement under this subtitle. Any Emergency Preparedness Agreement entered into by a contractor shall supersede any other agreement between that contractor and the Government for vessel availability in time of war or national emergency.

SEC. 654. DEFINITIONS (46 App. U.S.C. 1187c (1999)). In this subtitle:

(1) ***Bulk Cargo.*** The term "bulk cargo" means cargo that is loaded and carried in bulk without mark or count.

(2) ***Contractor.*** The term "contractor" means an owner or operator of a vessel that enters into an operating agreement for the vessel with the Secretary of Transportation under section 652.

(3) ***Ocean Common Carrier.*** The term "ocean common carrier" means a person holding itself out to the general public to operate vessels to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation, that—

(A) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and

(B) utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not

include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker. As used in this paragraph, "chemical parcel-tanker" means a vessel whose cargo-carrying capability consists of individual cargo tanks for bulk chemicals that are a permanent part of the vessel, that have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination, and that has a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

(4) **Fleet.** The term "Fleet" means the Maritime Security Fleet established pursuant to section 651(a).

(5) **LASH Vessel.** The term "LASH vessel" means a lighter aboard ship vessel.

(6) **United States-Documented Vessel.** The term "United States-documented vessel" means a vessel documented under chapter 121 of title 46, United States Code.

SEC. 655. AUTHORIZATION OF APPROPRIATIONS (46 App. U.S.C. 1187d (1999)).

There are authorized to be appropriated for operating agreements under this subtitle, to remain available until expended, \$100,000,000 for fiscal year 1996 and such sums as may be necessary, not to exceed \$100,000,000, for each fiscal year thereafter through fiscal year 2005.

SEC. 656. NONCONTIGUOUS DOMESTIC TRADES (46 App. U.S.C. 1187e (1999)).

(a) (1) Except as otherwise provided in this section, no contractor or related party shall receive payments pursuant to this subtitle during a period when it participates in a noncontiguous domestic trade, except upon written permission of the Secretary of Transportation. Such written permission shall also be required for any material change in the number or frequency of sailings, the capacity offered, or the domestic ports called by a contractor or related party in a noncontiguous domestic trade. The Secretary may grant such written permission pursuant to written application of such contractor or related party unless the Secretary finds that—

(A) existing service in that trade is adequate; or

(B) the service sought to be provided by the contractor or related party—

(i) would result in unfair competition to any other person operating vessels in such noncontiguous domestic trade, or

(ii) would be contrary to the objects and policy of this Act.

(2) For purposes of this subsection, written permission of the Secretary means permission which states the capacity offered, the number and frequency of sailings, and the domestic ports called, and which is granted following—

(A) written application containing the information required by paragraph (e)(1) by a person seeking such written permission, notice of which application shall be published in the Federal Register within 15 days of filing of such application with the Secretary;

(B) holding of a hearing on the application under section 554 of title 5, United States Code, in which every person, firm or corporation having any interest in the application shall be permitted to intervene and be heard; and

(C) final decision on the application by the Secretary within 120 days following conclusion of such hearing.

(b)(1) Subsection (a) shall not apply in any way to provision by a contractor of service within the level of service provided by that contractor as of the date established by subsection (c) or to provision of service permitted by subsection (d).

(2) Subsection (a) shall not apply to operation by a contractor of a self-propelled tank vessel in a noncontiguous domestic trade, or to ownership by a contractor of an interest in a self-propelled tank vessel that operates in a noncontiguous domestic trade.

(c) The date referred to in subsection (b) shall be August 9, 1995: Provided however, That with respect to tug and barge service to Alaska the date referred to in subsection (b) shall be July 1, 1992.

(d) A contractor may provide service in a trade in addition to the level of service provided as of the applicable date established by subsection (c) in proportion to the annual increase in real gross product of the noncontiguous State or Commonwealth served since the applicable date established by subsection (c).

(e)(1) A person applying for award of an agreement under this subtitle shall include with the application a description of the level of service provided by that person in each noncontiguous domestic trade served as of the date applicable under subsection (c). The application also shall include, for each such noncontiguous domestic trade: a list of vessels operated by that person in such trade, their container carrying capacity expressed in twenty-foot equivalent units (TEUs) or other carrying capacity, the itinerary for each such vessel, and such other information as the Secretary may require by regulation. Such description and information shall be made available to the public. Within 15 days of the date of an application for an agreement by a person seeking to provide service pursuant to subsections (b) and (c) of this section, the Secretary shall cause to be published in the Federal Register notice of such

description, along with a request for public comment thereon.

Comments on such description shall be submitted to the Secretary within 30 days of publication in the Federal Register. Within 15 days after receipt of comments, the Secretary shall issue a determination in writing either accepting, in whole or part, or rejecting use of the applicant's description to establish the level of service provided as of the date applicable under subsection (c): Provided, That notwithstanding the provisions of this subsection, processing of the application for an award of an agreement shall not be suspended or delayed during the time in which comments may be submitted with respect to the determination or during the time prior to issuance by the Secretary of the required determination: Provided further, That if the Secretary does not make the determination required by this paragraph within the time provided by this paragraph, the description of the level of service provided by the applicant shall be deemed to be the level of service provided as of the applicable date until such time as the Secretary makes the determination.

(2) No contractor shall implement the authority granted in subsection (d) of this section except as follows:

(A) An application shall be filed with the Secretary which shall state the increase in capacity sought to be offered, a description of the means by which such additional capacity would be provided, the basis for applicant's position that such increase in capacity would be in proportion to or less than the increase in real gross product of the relevant noncontiguous State or Commonwealth since the applicable date established by subsection (c), and such information as the Secretary may require so that the Secretary may accurately determine such increase in real gross product of the relevant noncontiguous State or Commonwealth.

(B) Such increase in capacity sought by applicant and such information shall be made available to the public.

(C) Within 15 days of the date of an application pursuant to this paragraph the Secretary shall cause to be published in the Federal Register notice of such application, along with a request for public comment thereon.

(D) Comments on such application shall be submitted to the Secretary within 30 days of publication in the Federal Register.

(E) Within 15 days after receipt of comments, the Secretary shall issue a determination in writing either accepting, in whole or part, or rejecting, the increase in capacity sought by the applicant as being in proportion to or less than the increase in real gross product of the relevant noncontiguous State or Commonwealth since the applicable date established by subsection (c): Provided, That, notwithstanding the provisions of this section, if the Secretary does not make the

determination required by this paragraph within the time provided by this paragraph, the increase in capacity sought by applicant shall be permitted as being in proportion to or less than such increase in real gross product until such time as the Secretary makes the determination.

(f) With respect to provision by a contractor of service in a noncontiguous domestic trade not authorized by this section, the Secretary shall deny payments under the operating agreement with respect to the period of provision of such service but shall deny payments only in part if the extent of provision of such unauthorized service was de minimis or not material.

(g) Notwithstanding any other provision of this subtitle, the Secretary may issue temporary permission for any United States citizen, as that term is defined in section 2 of the Shipping Act, 1916, to provide service to a noncontiguous State or Commonwealth upon the request of the Governor of such noncontiguous State or Commonwealth, in circumstances where an Act of God, a declaration of war or national emergency, or any other condition occurs that prevents ocean transportation service to such noncontiguous State or Commonwealth from being provided by persons currently providing such service. Such temporary permission shall expire 90 days from date of grant, unless extended by the Secretary upon written request of the Governor of such State or Commonwealth.

(h) As used in this section:

(1) The term "level of service provided by a contractor" in a trade as of a date means—

(A) with respect to service other than service described in (B), the total annual capacity provided by the contractor in that trade for the 12 calendar months preceding that date: Provided, That, with respect to unscheduled, contract carrier tug and barge service between points in Alaska south of the Arctic Circle and points in the contiguous 48 States, the level of service provided by a contractor shall include 100 percent of the capacity of the equipment dedicated to such service on the date specified in subsection (c) and actually utilized in that service in the two-year period preceding that date, excluding service to points between Anchorage, Alaska and Whittier, Alaska, served by common carrier service unless such unscheduled service is only for carriage of oil or pursuant to a contract with the United States military: Provided further, That, with respect to scheduled barge service between the contiguous 48 States and Puerto Rico, such total annual capacity shall be deemed as such total annual capacity plus the annual capacity of two additional barges, each capable of carrying 185 trailers and 100 automobiles; and

(B) with respect to service provided by container vessels, the overall capacity equal to the sum of—

(i) 100 percent of the capacity of vessels operated by or for the contractor on that date, with the vessels' configuration and frequency of sailing in effect on that date, and which participate solely in that noncontiguous domestic trade; and

(ii) 75 percent of the capacity of vessels operated by or for the contractor on that date, with the vessels' configuration and frequency of sailing in effect on that date, and which participate in that noncontiguous domestic trade and in another trade, provided that the term does not include any restriction on frequency, or number of sailings, or on ports called within such overall capacity.

(2) The level of service set forth in paragraph (1) shall be described with the specificity required by subsection (e)(1) and shall be the level of service in a trade with respect to the applicable date established by subsection (c) only if the service is not abandoned thereafter, except for interruptions due to military contingency or other events beyond the contractor's control.

(3) The term "participates in a noncontiguous domestic trade" means directly or indirectly owns, charters, or operates a vessel engaged in transportation of cargo between a point in the contiguous 48 states and a point in Alaska, Hawaii, or Puerto Rico, other than a point in Alaska north of the Arctic Circle.

(4) The term "related party" means—

(A) a holding company, subsidiary, affiliate, or associate of a contractor who is a party to an operating agreement under this subtitle; and

(B) an officer, director, agent, or other executive of a contractor or of a person referred to in subparagraph (A).

TITLE VII²⁷—PRIVATE CHARTER OPERATION

SEC. 701. ADDITIONAL POWERS OF SECRETARY FOR COMPLETION OF PROGRAM (46 App. U.S.C. 1191 (1999)).

Whenever the Secretary of Transportation shall find and determine, and such finding and determination shall be approved by the President of the United States, that the national policy declared in section 101 of this Act, and the objectives set forth in section 210 of this Act, cannot be fully realized within a reasonable time, in whole or in part, under the provisions of Titles V and VI, the Secretary of Transportation is hereby authorized and directed to complete its long-range program previously adopted as hereinafter provided in this title.

SEC. 702. CONSTRUCTION OR RECONDITIONING OF VESSELS BY SECRETARY (46 App. U.S.C. 1192 (1999)). The Secretary of Transportation is authorized to have constructed in shipyards in the continental United States, such new vessels as he shall determine may be required to carry out the objects of this Act, and to have old vessels reconditioned or remodeled in such yards: Provided, That if satisfactory contracts for such new construction or reconstruction, in accordance with the provisions of this Act, cannot be obtained from private shipbuilders, the Secretary of Transportation is authorized to have such vessels constructed, reconditioned, or remodeled in United States navy yards. For the purposes of this section, the term “continental United States” includes the States of Alaska and Hawaii.

SEC. 703. COMPETITIVE BIDDING (46 App. U.S.C. 1193 (1999)). (a) **Construction, reconstruction, or reconditioning of vessels.** No contract for the building of a new vessel, or for the reconditioning or reconstruction of any other vessel, shall be made by the Secretary of Transportation with any private shipbuilder, except after due advertisement and upon sealed competitive bids.

(b) **Requirements.** All contracts for the construction, reconditioning, or reconstruction of a vessel or vessels by a private shipbuilder under authority of this title shall be subject to all the provisions and requirements prescribed in title V of this Act with respect to contracts with a private shipbuilder for the construction of vessels under authority of that title.

(c) **Opening of bids.** All bids required by the Secretary of Transportation for the construction, reconstruction, or reconditioning of vessels, and for the chartering of the Secretary’s vessels hereinafter provided for, shall be opened at the time, hour, and place stated in the

²⁷ With respect to the charter of war-built vessels, see Section 5(e) and (f) of the Merchant Ship Sales Act, 1946, as amended (50 U.S.C. App. 1738 (e) & (f)), page 233, *infra*. For provisions restricting the obligation of the Maritime Administration to pay for consumable stores, bunkers and slop chest items on chartered vessels, see Public Law 84-121 (69 STAT. 231) and Public Law 84-604 (70 STAT. 318).

advertisement for bids, and all interested persons, including representatives of the press, shall be permitted to attend, and the results of such bidding shall be publicly announced.

SEC. 704.²⁸ CHARTER OR SALE OF VESSELS ACQUIRED BY DEPARTMENT OF TRANSPORTATION (46 App. U.S.C. 1194 (1999)). All vessels transferred to or otherwise acquired by the Department of Transportation in any manner may be chartered or sold by the Secretary of Transportation pursuant to the further provisions of this Act.

SEC. 705. EMPLOYMENT OF VESSELS ON FOREIGN TRADE ROUTES; SELECTION OF ROUTES; ENCOURAGING PRIVATE OPERATION BY SALE OR CHARTER; SELLING PRICE (46 App. U.S.C. 1195 (1999)). As soon as practicable after the passage of this Act, and continuing thereafter, the Secretary of Transportation shall arrange for the employment of the Department of Transportation's vessels in steamship lines on such trade routes, exclusively serving the foreign trade of the United States, as the Secretary of Transportation shall determine are necessary and essential for the development and maintenance of the commerce of the United States and the national defense: Provided, That such needs are not being adequately served by existing steamship lines privately owned and operated by citizens of the United States and documented under the laws of the United States. It shall be the policy of the Secretary of Transportation to encourage private operation of each essential steamship line now owned by the United States by selling such lines to citizens of the United States in the manner provided in section 7 of the Merchant Marine Act, 1920, and in strict accordance with the provisions of section 5 of said Act, or by demising his vessels on bare-boat charter to citizens of the United States who shall agree to maintain such line or lines in the manner hereinafter provided. No vessel constructed under the provisions of this Act, as amended, shall be sold by the Secretary of Transportation for operation in the foreign trade for a sum less than the estimated foreign construction cost exclusive of national defense features (determined as of the date the construction contract therefor is executed) less depreciation based on a twenty-five-year life, nor shall any such vessel be sold by the Secretary of Transportation for operation in the domestic trade for a sum less than the cost of construction in the United States exclusive of national defense features less depreciation based on a twenty-five-year life.²⁹

²⁸ Section 1 of the Act of June 29, 1949 (63 STAT. 349), as amended (46 App. U.S.C. 864b) provides: "On or after June 29, 1949, no sale of a vessel by the Maritime Administration of the Department of Transportation shall be completed until its ballast and equipment shall have been inventoried and their value taken into consideration by the Maritime Administration in determining the selling price."

²⁹ See footnote 4, page 22, *supra*.

**SEC. 706. ADVERTISING FOR BIDS FOR CHARTERS;
REJECTION OF BIDS (46 App. U.S.C. 1196 (1999)).**

(a) The Secretary of Transportation shall not charter the Department of Transportation's vessels to private operators except upon competitive sealed bids submitted in strict compliance with all the terms and conditions of a public advertisement soliciting such bids. Each and every advertisement for bids to charter the Department of Transportation's vessels shall state the number, type, and tonnage of the vessels the Secretary of Transportation is offering for bare-boat charter for operation as a steamship line on a designated trade route, the minimum number of sailings that will be required, the length of time for which the charter will be given, and all other information the Secretary of Transportation shall deem necessary for the information of prospective bidders.

(b) The Secretary of Transportation shall have authority to, and shall announce in his advertisements for bids that the Secretary of Transportation reserves the right to, reject any and all bids submitted. The Secretary of Transportation shall reject any bid for the charter (under sections 701 to 713, both inclusive, of this title, as amended) of any vessel constructed under the provisions of this Act, as amended, if the charter hire offered by the bidder is lower than the minimum charter hire for such vessel would be if chartered under the provisions of section 714, as amended, of this title.

SEC. 707. AWARING CHARTER ON BIDS (46 App. U.S.C. 1197 (1999)).

(a) **Highest bid.** The Secretary of Transportation shall award the charter to the bidder proposing to pay the highest monthly charter hire unless the Secretary of Transportation shall reject such bid for the reasons set forth in subsection (b) of this section.

(b) **Rejection of highest bid.** The Secretary of Transportation may reject the highest or most advantageous or any other bid, if, in the Secretary's discretion, the charter hire offered is deemed too low, or the Secretary of Transportation determines that the bidder lacks sufficient capital, credit, or experience to operate successfully the line; but the reason or reasons for rejection of any bid upon request of the bidder, shall be stated to such bidder in writing.

(c) **Next highest bid; rejection of all bids and readvertisement.** If the highest bid is rejected, the Secretary of Transportation may award the charter to the next highest bidder, or may reject all bids and readvertise the line: Provided, however, That the Secretary of Transportation may operate the line until conditions appear to be more favorable for a reoffering of the line for private charter.

SEC. 708. PAYMENT OF SUBSIDIES TO CHARTERERS (46 App. U.S.C. 1198 (1999)). The Secretary of Transportation may, in his discretion financial aid is deemed necessary, enter into a contract with any charterer of its vessels for payment to such charterer of an operating-differential subsidy upon the same terms and conditions and subject to the same limitations and restrictions, where applicable, as are elsewhere provided in this Act with respect to payments of such subsidies to operators of privately owned vessels.

SEC. 709. EXCESS PROFIT; PAYMENT TO SECRETARY; FORMULA FOR DETERMINING PROFIT (46 App. U.S.C. 1199 (1999)).

(a) Every charter made by the Secretary of Transportation pursuant to the provisions of this title shall provide that whenever, at the end of any calendar year subsequent to the execution of such charter, the cumulative net voyage profits (after payment of the charter hire reserved in the charter and payment of the charter's fair and reasonable overhead expenses applicable to operation of the chartered vessels) shall exceed 10 per centum per annum on the charterer's capital necessarily employed in the business of such chartered vessels, the charterer shall pay over to the Secretary of Transportation as additional charter hire, one-half of such cumulative net voyage profit in excess of 10 per centum per annum: Provided, That the cumulative net profit so accounted for shall not be included in any calculation of cumulative net profit in subsequent years.

(b) Every charter shall contain a definition of the terms "net voyage profit" and "fair and reasonable overhead expenses", and "capital necessarily employed", as said terms are used in subsection (a) of this section, setting forth the formula for determining such profit and overhead expense and capital necessarily employed, which definitions shall have been previously approved by the Secretary of Transportation and published in the advertisement for bids for such charter.

SEC. 710. UNDERTAKING REQUIRED OF CHARTERER (46 App. U.S.C. 1200 (1999)). Every charterer of the Secretary of Transportation's vessels shall be required to deposit with the Secretary of Transportation an undertaking with approved sureties as security for the faithful performance of all of the conditions of the charter, including indemnity against liens on the chartered vessels, in such amount as the Secretary of Transportation shall require.

SEC. 711. TERMS AND CONDITIONS OF CHARTERS (46 App. U.S.C. 1201 (1999)). The charters to be made by the Secretary of Transportation pursuant to the provisions of this title shall demise the vessels to the charterer subject to all usual conditions contained in bare-boat charters, and until January 1, 1940, shall be for terms of three years

or less as the Secretary of Transportation may decide: Provided, That after January 1, 1940, charters may be executed by the Secretary of Transportation for such terms as the experience gained by the Secretary of Transportation shall indicate are to the best interests of the United States and the merchant marine.

SEC. 712. INSURANCE REQUIREMENTS; REPAIRS; INSPECTION BY SECRETARY; TERMINATION OF CHARTER IN NATIONAL EMERGENCY (46 App. U.S.C. 1202 (1999)). Every charter shall provide—

(a) That the charterer shall carry on the chartered vessels, at his own expense, policies of insurance covering all marine and port risks, protection and indemnity risks, and all other hazards and liabilities, in such amounts, in such form, and in such insurance companies as the Secretary of Transportation shall require and approve, adequate to cover all damages claimed against and losses sustained by the chartered vessels arising during the life of the charter: Provided, That in accordance with existing law, some or all of such insurance risks may be underwritten by the Secretary of Transportation himself as in his discretion he may determine.

(b) That the charterer shall at its own expense keep the chartered vessel in good state of repair and in efficient operating condition and shall at its own expense make any and all repairs as may be required by the Secretary of Transportation.

(c) That the Secretary of Transportation shall have the right to inspect the vessel at any and all times to ascertain its condition.

(d) That whenever the President shall proclaim that the security of the national defense makes it advisable, or during any national emergency declared by proclamation of the President, the Secretary of Transportation may terminate the charter without cost to the United States upon such notice to the charterers as the President shall determine.

SEC. 713. FINANCIAL RESOURCES AND OTHER FACTORS CONSIDERED IN AWARDING CHARTERS (46 App. U.S.C. 1203 (1999)). In the awarding of charters, the Secretary of Transportation shall take in consideration the charter's financial resources and credit standing, practical experience in the operation of vessels, and any other factors that would be considered by a prudent businessman in entering into a transaction involving a large investment of his capital; and the Secretary of Transportation is directed to refrain from chartering the Department of Transportation's vessels to any person appearing to lack sufficient capital, credit, and experience to operate successfully the vessel over the period covered by the charter.

SEC. 714.³⁰ CONSTRUCTION AND CHARTERING OF VESSELS FOR UNSUCCESSFUL ROUTES; PURCHASE OF VESSEL BY CHARTERER; PURCHASE PRICE; OPERATION OF VESSEL IN FOREIGN TRADE (46 App. U.S.C. 1204 (1999)).

If the Secretary of Transportation shall find that any trade route (determined by the Secretary of Transportation to be an essential trade route as provided in section 211 of this Act) cannot be successfully developed and maintained and the Secretary of Transportation's replacement program cannot be achieved under private operation of such trade route by a citizen of the United States with vessels registered under the laws thereof, without further Government aid in addition to the financial aids authorized under titles V and VI of this Act, the Secretary of Transportation is authorized to have constructed, in private shipyards or in navy yards, the vessel or vessels of the types deemed necessary for such trade route, and to demise such new vessel or vessels on bare-boat charter to the American-flag operator established on such trade route, without advertisement or competition, upon an annual charter hire of not less than 4 per centum of the price (herein referred to as the "foreign cost") at which such vessel or vessels would be sold if constructed under Title V, plus an amount equal to (i) the sum of a percentage of the depreciated foreign cost computed annually upon the basis of a twenty-five year life of the vessel determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the term of the charter, adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs. Such charter may contain an option to the charterer to purchase such vessel or vessels from the Secretary of Transportation within five years after delivery thereof under the charter, upon the same terms and conditions as are provided in title V for the purchase of new vessels from the Secretary of Transportation, except that (a) the purchase price shall be the foreign cost less depreciation to the date of purchase based upon a twenty-five-year life; (b) the required cash payment payable at the time of such purchase shall be 25 per centum of the purchase price as so determined; (c) the charter may provide that all or any part of the charter hire paid in excess of the minimum charter hire provided for in this section may be credited against the cash payment payable at the time of such purchase; (d) the balance of the purchase price shall be paid within the years remaining of the twenty-five years after the date

³⁰ See footnote 4, page 22, *supra*.

of delivery of the vessel under the charter and in approximately equal annual installments, except that the first of said installments which shall be payable upon the next ensuing anniversary date of such delivery under the charter, shall be a proportionate part of the annual installment, interest to be payable upon the unpaid balances from the date of purchase, at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs.

Such charter shall provide for operation of the vessel exclusively in foreign trade, or on a round-the-world voyage, or on a round voyage from the west coast of the United States to a European port or ports which includes intercoastal ports of the United States, or a round voyage from the Atlantic coast of the United States to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at the State of Hawaii, or an island possession or island Territory of the United States, and if the vessel is operated in the domestic trade of any of the above-enumerated services the charterer will pay annually to the Secretary of Transportation that proportion of one-twenty-fifth of the difference between the domestic and foreign cost of such vessel as the gross revenue derived from the domestic trade bears to the gross revenue derived from the entire voyages completed during the preceding year.

SEC. 715. EXPERIMENTAL OPERATION AND TESTING OF UNITED STATES VESSELS; NUMBER; BAREBOAT CHARTERS; REVIEW OF CHARTERS AND AGENCY AGREEMENTS; PROVISIONS APPLICABLE TO CHARTERS AND AGREEMENTS (46 App. U.S.C. 1205 (1999)). The Secretary of Transportation, for the purpose of practical development, trial, and testing, is authorized without regard to other provisions of this title or other laws relating to chartering and general agency operations, to operate, under general agency agreements or bareboat charter, vessels owned by the United States (including any national defense reserve vessel) which have been constructed, reconditioned, or remodeled for experimental or testing purposes, in the foreign or domestic trade of the United States or for use for the account of any agency or department of the United States, under such reasonable terms or conditions as the Secretary of Transportation determines to be necessary to carry out the objects of this Act: Provided, however, That not in excess of ten such vessels shall be operated and tested under the authority of this section in any

one year. Bareboat charters entered into under this section shall be made at reasonable rates of charter and shall include such restrictions and conditions as the Secretary of Transportation determines to be necessary or appropriate to protect the public interest, including provisions for recapture of profits as provided for in section 709 of this Act, as amended. Charters and general agency agreements entered into under this section shall be reviewed annually for the purpose of determining whether conditions exist which would justify continuance of the charter or agreement. Those provisions of law prescribed or incorporated under the heading "vessel operations revolving fund"³¹ in chapter VIII of the Third Supplemental Appropriation Act, 1951 (Public Law 45, Eighty-second Congress; 65 Stat. 52, 59); which relate to vessel operating activities of the Secretary of Transportation and to employment of seamen through general agents, shall be applicable in connection with charters and agreements entered into under this section.

³¹The Vessel Operations Revolving Fund is set out at page 181, *infra*.

TITLE VIII—CONTRACT PROVISIONS

SEC. 801. PROVISION FOR BOOKS AND RECORDS; FILING BALANCE SHEETS; INSPECTION AND AUDITING BY SECRETARY; RESCISSION OF CONTRACT ON FAILURE TO COMPLY WITH PROVISIONS (46 App. U.S.C. 1211 (1999)). Every contract executed by the Secretary of Transportation under the provisions of title VI or VII of this Act; shall contain provisions requiring (1) that the contractor and every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by, the contractor, to keep its books, records, and accounts, relating to the maintenance, operation, and servicing of the vessels, services, routes, and lines covered by the contract, in such form and under such regulations as may be prescribed by the Secretary of Transportation: Provided, That the provisions of this paragraph shall not require the duplication of books, records, and accounts required to be kept in some other form by the Interstate Commerce Commission; (2) that the contractor and every affiliate, domestic agent, subsidiary, or holding company connected with or directly or indirectly controlling or controlled by, the contractor, to file, upon notice from the Secretary of Transportation, balance sheets, profit and loss statements, and such other statements of financial operations, special report, memoranda of any facts and transactions, which in the opinion of the Secretary of Transportation affect the financial results in, the performance of, or transactions or operations under, such contract; (3) that the Secretary of Transportation shall be authorized to examine and audit the books, records, and accounts of all persons referred to in this section whenever he may deem it necessary or desirable; and (4) that upon the willful failure or refusal of any person described in this section to comply with the contract provisions required by this section, the Secretary of Transportation shall have the right to rescind the contract, and upon such rescission the United States shall be relieved of all further liability on such contract.

SEC. 802. PURCHASE OR REQUISITION OF VESSELS BY UNITED STATES; AMOUNT OF PAYMENT (46 App. U.S.C. 1212 (1999)). Every contract executed by the Secretary of Transportation under authority of title V of this Act shall provide that—

In the event the United States shall, through purchase or requisition, acquire ownership of the vessel or vessels on which a construction-differential subsidy was paid, the owner shall be paid therefor the value thereof, but in no event shall such payment exceed the actual depreciated construction cost thereof (together with the actual depreciated cost of capital improvements thereon, but excluding the cost of national-defense features) less the depreciated amount of construction-differen-

tial subsidy theretofore paid incident to the construction or reconditioning of such vessel or vessels, or the fair and reasonable scrap value of such vessel as determined by the Secretary of Transportation, whichever is the greater. Such determination shall be final. In computing the depreciated value of such vessel, depreciation shall be computed on each vessel on the schedule adopted by the Bureau of Internal Revenue for income-tax purposes.

The foregoing provision respecting the requisition or the acquisition of ownership by the United States shall run with the title to such vessel or vessels and be binding on all owners thereof.

SEC. 804. OPERATING COMPETING FOREIGN-FLAG VESSEL FORBIDDEN (46 App. U.S.C. 1222 (1999)).

(a) **Operating-Differential Subsidy; Competition With Essential American-Flag Service.** Except as provided in subsections (b) and (c) of this section, it shall be unlawful for any contractor receiving an operating-differential subsidy under title VI or for any charterer of vessels under title VII of this Act, or any holding company, subsidiary, affiliate, or associate of such contractor or such charterer, or any officer, director, agent, or executive thereof, directly or indirectly to own, charter, act as an agent or broker for, or operate any foreign-flag vessel which competes with any American-flag service determined by the Secretary of Transportation to be essential as provided in section 211 of this Act.

(b) **Waiver; Special Circumstances.** Under special circumstances and for good cause shown, the Secretary of Transportation may, in his discretion, waive the provisions of subsection (a) of this section as to any contractor, for a specific period of time.

(c) **Exceptions.** Upon application to the Secretary of Transportation the provisions of subsection (a) of this section shall not apply to the following specified activities of any contractor under title VI, or those in the foregoing specified relationship to him, who was not such a contractor on April 15, 1970, and who shall have complied with the requirement set forth in subsection (d) of this section:

(1) Until April 15, 1990—

(A) the continued ownership, charter, or operation of a foreign-flag vessel engaged in the carriage of dry or liquid cargoes in bulk which was owned, chartered, or operated by such contractor, or those in the foregoing specified relationship to him, on April 15, 1970;

(B) the continued acting as agent or broker for a vessel described in subsection (c)(1)(A) of this section which is owned, chartered, or operated by such contractor, or those in the foregoing specified relationship to him, and for which such contractor, or those in foregoing special relationship to him, were acting as agent or broker on April 15, 1970:

(d) **Statement to be Filed with Secretary.** No contractor under title VI, whether he shall have become such a contractor before or after the date of enactment of this section, shall avail himself of the provisions of subsection (c) of this section unless not later than ninety days after the enactment of this section there shall have been filed with the Secretary of Transportation a full and complete statement, satisfactory in form and substance to the Secretary, of all foreign-flag vessels which he, or those in the foregoing specified relationship to him, directly or indirectly owned, chartered, acted as agent or broker for, or operated on April 15, 1970.

(e) **Report to Congress.** During the period of time provided for in subsection (c) of this section, the Secretary of Transportation shall include in the annual report pursuant to section 208 of this Act, a report on the activities of contractors under such subsection, including but not limited to, the nature and extent of such activities; its effect, if any, upon carrying forward the national policy declared in section 101 of this Act; and the Secretary's recommendations for legislation, if such is deemed to be necessary.

(f) **Use of Foreign-Flag Vessels.**³² The provisions of subsection (a) shall not preclude a contractor receiving assistance under subtitle A or B of title VI, or any holding company, subsidiary, or affiliate of the contractor, or any officer, director, agent, or executive thereof, from—

(1) owning, chartering, or operating any foreign-flag vessel on a voyage or a segment of a voyage that does not call at a port in the United States;

(2) owning, chartering, or operating any foreign-flag vessel in line haul service between the United States and foreign ports if—

(A) the foreign-flag vessel was owned, chartered, or operated by, or is a replacement for a foreign-flag vessel owned, chartered, or

³² Subsection (f) was added by Section 5(a) of Public Law 104-239, approved October 8, 1996 (110 STAT. 3131), the Maritime Security Act of 1996. Section 5(b) provides: "(b) **Effective Date.**—The amendment made by subsection (a) shall apply to a contractor under subtitle B of title VI of the Merchant Marine Act, 1936, as amended by this Act, upon enactment of this Act, and shall apply to a contractor under subtitle A of title VI of that Act, upon the earlier of—(1) the date that a payment is made, under the Maritime Security Program under subtitle B of that title to a contractor under subtitle B of that title who is not party to an operating-differential subsidy contract under subtitle A of that title, with the Secretary of Transportation to cause notice of the date of such payment to be published to be published in the Federal Register as soon as possible; or (2) with respect to a particular contractor under the operating-differential subsidy program under subtitle A of that title, the date that contractor enters into a contract with the Secretary under the Maritime Security Program established by subtitle B of that title."

On December 20, 1996, the Maritime Security Program was entered into by Farrell Lines Incorporated, Waterman Steamship Corporation, Lykes Bros. Steamship Co. Inc., Central Gulf Lines, Inc., Crowley Maritime Corp., Maersk Line, Ltd., OSG Car Carriers, Inc., Sea-Land Service, Inc. and First American Bulk Carrier Corporation. On January 21, 1997, American President Lines, Ltd. entered into the Maritime Security Program.

operated by, such owner or operator, or any holding company, subsidiary, affiliate, or associate of such owner or operator, on the date of enactment of the Maritime Security Act of 1996;

(B) the owner or operator, with respect to each additional foreign-flag vessel, other than a time chartered vessel, has first applied to have that vessel covered by an operating agreement under subtitle B of title VI, and the Secretary has not awarded an operating agreement with respect to that vessel within 90 days after the filing of the application; or

(C) the vessel has been placed under foreign documentation pursuant to section 9 of the Shipping Act, 1916 (46 U.S.C. App. 808), except that any foreign-flag vessel, other than a time chartered vessel, a replacement vessel under section 653(d), or a vessel operated by the owner or operator on the date of enactment of the Maritime Security Act of 1996, in line haul service between the United States and foreign ports is registered under the flag of an effective United States-controlled foreign flag, and available to be requisitioned by the Secretary of Transportation pursuant to section 902 of this Act;

(3) owning, chartering, or operating foreign-flag bulk cargo vessels that are operated in foreign-to-foreign service or the foreign commerce of the United States;

(4) chartering or operating foreign-flag vessels that are operated solely as replacement vessels for United States-flag vessels or vessel capacity that are made available to the Secretary of Defense pursuant to section 653 of this Act; or

(5) entering into time or space charter or other cooperative agreements with respect to foreign-flag vessels or acting as agent or broker for a foreign-flag vessel or vessels.

SEC. 805. FORBIDDEN PRACTICES RELATING TO COASTWISE SERVICE, SALARIES, OFFICERS, AND EMPLOYEES (46 App. U.S.C. 1223 (1999)).

(a) **Foreign Trade Subsidy Contractor Engaging in Coastwise or Intercoastal Trade.** It shall be unlawful to award or pay any subsidy to any contractor under authority of subtitle A of title VI of this Act, or to charter any vessel to any person under title VII of this Act, if said contractor or charterer, or any holding company, subsidiary, affiliate, or associate of such contractor or charterer, or any officer, director, agent, or executive thereof, directly or indirectly, shall own, operate, or charter any vessel or vessels engaged in the domestic intercoastal or coastwise service, or own any pecuniary interest, directly or indirectly, in any person or concern that owns, charters, or operates any vessel or vessels in the domestic intercoastal or coastwise service, without the written permission of the Secretary of Transportation. Every person, firm, or cor-

poration having any interest in such application shall be permitted to intervene and the Secretary of Transportation shall give a hearing to the applicant and the intervenors. The Secretary of Transportation shall not grant any such application if the Secretary of Transportation finds it will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service or that it would be prejudicial to the objects and policy of this Act: Provided, That if such contractor or other person above-described or a predecessor in interest was in bona-fide operation as a common carrier by water in the domestic, intercoastal, or coastwise trade in 1935 over the route or routes or in the trade or trades for which application is made and has so operated since that time or if engaged in furnishing seasonal service only, was in bona-fide operation in 1935 during the season ordinarily covered by its operation, except in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Secretary of Transportation shall grant such permission without requiring further proof that public interest and convenience will be served by such operation, and without further proceedings as to the competition in such route or trade.

If such application be allowed, it shall be unlawful for any of the persons mentioned in this section to divert, directly or indirectly, any moneys, property, or other thing of value, used in foreign-trade operations, for which a subsidy is paid by the United States, into any such coastwise or intercoastal operations; and whosoever shall violate this provision shall be guilty of a misdemeanor.

(b) Contractor in Default Paying More Than Specified Salary.

Whenever any contractor under subtitle A of title VI or title VII receiving an operating-differential subsidy is in default with respect to any mortgage, note, purchase contract, or other obligation to the Secretary of Transportation, or has not maintained, in a manner satisfactory to the Secretary of Transportation, all of the reserves provided for in this Act, the Secretary of Transportation shall have the right to supervise the number and compensation of all officers and employees of the contractor.

(d) Employing Other Persons or Concerns as Managing or Operating Agent. It shall be unlawful, without express written consent of the Secretary of Transportation for any contractor holding a contract authorized under subtitle A of title VI or VII of this Act to employ any other person or concern as the managing or operating agent of such operator, or to charter any vessel, on which an operating-differential subsidy is to be paid, for operation by another person or concern, and if such charter is made, the person or concern operating the chartered vessel or vessels shall be subject to all the terms and provisions of this Act, including limitations of profits and salaries.

(f) **Penalty.** Any willful violation of any provision of this section shall constitute a breach of the contract or charter in force under this Act, and upon determining that such a violation has occurred the Secretary of Transportation may forthwith declare such contract or charter rescinded and any person willfully violating the provisions of this section shall be guilty of a misdemeanor.

SEC. 806. FINES AND PENALTIES; CONVICTION AS RENDERING PERSONS INELIGIBLE TO RECEIVE BENEFITS OF LAW (46 APP. U.S.C. 1228 (1999)).

Whenever any natural person is found guilty in any district court of the United States of any act or acts declared in this Act to constitute a misdemeanor, he shall be punished by a fine of not more than \$10,000, or by imprisonment for not less than one year or more than five years, or by both fine and imprisonment. Whenever any corporation is found guilty of any act or acts declared in this Act to be unlawful, such corporation shall be punished by a fine of not more than \$25,000.

In addition to the punishment prescribed in subsection (a) of this section, any person or corporation convicted of a misdemeanor under the provisions of this Act shall be ineligible, at the discretion of the Commission or the Secretary of Transportation, to receive any benefits under titles V and VI of this Act, or to receive a charter under title VII of this Act, for a period of five years after conviction.

Whoever knowingly and wilfully violates any order, rule, or regulation of the Federal Maritime Commission or the Secretary of Transportation made or issued in the exercise of the powers, duties, or functions transferred to it or him or vested in it or him by this Act, as amended, for which no penalty is otherwise expressly provided, shall upon conviction thereof be subject to a fine of not more than \$500. If such violation is a continuing one, each day of such violation shall constitute a separate offense.

SEC. 808. DISCRIMINATION IN RESPECT TO CARGO (46 APP. U.S.C. 1226 (1999)).

It shall be unlawful for any contractor receiving an operating-differential subsidy under title VI or for any charterer under title VII of this Act unjustly to discriminate in any manner so as to give preference directly or indirectly in respect to cargo in which such contractor or charterer has a direct or indirect ownership, or purchase or vending interest; and whosoever shall violate this provision shall be guilty of a misdemeanor.

SEC. 809. CONTRACTS DESIGNED EQUITABLY FOR ALL PORTS; MINIMUM ALLOCATION OF FUNDS; REPORT TO CONGRESS; PREFERENCE TO CITIZENS OF UNITED

STATES; REGIONAL OFFICES FOR MARITIME ADMINISTRATION (46 App. U.S.C. 1213 (1999)).

(a) Contracts under this Act shall be entered into so as to equitably serve, insofar as possible, the foreign-trade requirements of the Atlantic, Gulf, Great Lakes, and Pacific ports of the United States. In order to assure equitable treatment for each range of ports referred to in the preceding sentence, not less than 10 percent of the funds appropriated for construction-differential subsidy and operating-differential subsidy pursuant to this Act or any law authorizing funds for the purposes of this Act shall be allocated to each such port range: Provided, however, That such allocation shall apply to the extent that subsidy contracts are approved by the Secretary of Transportation. For the purposes of this section and section 211(a), the Secretary shall establish trade routes, services, or lines that take into account the seasonal closure of the Saint Lawrence Seaway and provide for alternate routing of ships via a different range of ports during that closure so as to maintain continuity of service on a year-round basis. For the purposes of section 605(c), such an alternate routing via a different range of ports shall be deemed to be service from Great Lakes ports, provided such alternative routing is based upon receipt or delivery of cargo at Great Lakes-Saint Lawrence Seaway ports under through intermodal bills of lading. The Secretary shall include in the annual report pursuant to section 208 of this Act a detailed report (1) describing the actions that have been taken pursuant to this Act to assure insofar as possible that direct and adequate service is provided by United States-flag commercial vessels to each range of ports referred to in this section; and (2) including any recommendations for additional legislation that may be necessary to achieve the purpose of this section. In awarding contracts under this Act, preference shall be given to persons who are citizens of the United States and who have the support, financial and otherwise, of the domestic communities primarily interested.

(b) There shall be established and maintained within the Maritime Administration such regional offices as may be necessary, including, but not limited to, one such office for each of the four port ranges specified in subsection (a) of this section. The Secretary of Transportation shall appoint a qualified individual to be the Director of each such regional office and shall carry out appropriate functions, activities, and programs of the Maritime Administration through such regional offices.

SEC. 810. AGREEMENTS WITH OTHER CARRIERS FORBIDDEN; WITHHOLDING SUBSIDIES; ACTIONS BY INJURED PERSONS FOR DAMAGES (46 App. U.S.C. 1227 (1999)). It shall be unlawful for any contractor receiving an operating-differential subsidy under title VI or for any charterer of vessels under title VII of this Act, to continue as a party to or to conform to any agreement with

another carrier or carriers by water, or to engage in any practice in concert with another carrier or carriers by water, which is unjustly discriminatory or unfair to any other citizen of the United States who operates a common carrier by water exclusively employing vessels registered under the laws of the United States on any established trade route from and to a United States port or ports.

No payment or subsidy of any kind shall be paid directly or indirectly out of funds of the United States or any agency of the United States to any contractor or charterer who shall violate this section. Any person who shall be injured in his business or property by reason of anything forbidden by this section may sue therefor in any district court of the United States in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.